

HOUSE BILL 2890

By Sargent

AN ACT to amend Tennessee Code Annotated, Title 48, Chapter 2, Part 1 relative to the registration of investment advisor representatives.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 48-2-102, is hereby amended by adding the following definition as a new appropriately designated subdivision:

- ( ) "Investment adviser representative" means any partner, officer, director of (or person occupying a similar status or performing similar functions), an investment adviser, or other individual, except clerical or ministerial personnel, who is employed by or associated with, an investment adviser and does any of the following:
- (1) makes any recommendation or otherwise renders advise regarding securities,
  - (2) manages accounts or portfolios of clients,
  - (3) determines which recommendation or advice regarding securities should be given,

- (4) solicits, offers or negotiates for sale of or sells investment advisory services, or
- (5) supervises employees who perform any of the foregoing.

“Investment adviser representative” does not include such other persons not within the intent of this subdivision as the commissioner may, by rule, exempt from this definition as not in the public interest and necessary for the protection of investors.

SECTION 2. Tennessee Code Annotated, 48-2-109, is amended by deleting subsection (c) in its entirety and by substituting instead the following:

- (c) It is unlawful for any person to transact business from or in this state as an investment adviser or investment adviser representative unless:
  - (1) The person is registered as an investment adviser or investment adviser representative under this part;
  - (2) The person is required to register as an investment adviser pursuant Section 203 of the Investment Advisers Act of 1940; provided however, that an initial notice filing, consisting of any documents filed with the securities and exchange commission, a consent to service of process, and a nonrefundable fee of one hundred dollars (\$100) shall be filed with the commissioner or the commissioner’s designee, with payment of any reasonable costs charged by the designee for processing such filings, ten (10) days prior to the person acting as an investment adviser as defined by §48-2-107(7); and a renewal notice filing containing such information as the commissioner by rule requires and a nonrefundable fee of one hundred dollars (\$100) shall be filed with the commissioner or the commissioner’s designee, with payment of any reasonable costs charged by the designee for processing such filing for each successive year in which such person acts as such investment adviser; every notice filing of

an investment adviser expires annually, unless timely renewed, on  
December 31 of each year; or

- (3) The person's only clients in this state are insurance companies.

SECTION 3. Tennessee Code Annotated, Section 48-2-109, is amended by deleting the current language of subsection (d)(2) in its entirety and by substituting instead the following sentence:

- (2) Every registration or an agent or investment adviser representative expires annually, unless timely renewed, on December 31 of each year.

SECTION 4. Tennessee Code Annotated, Section 48-2-109(e) is hereby amended by deleting the word "fine" and substituting in its place the words "civil penalty".

SECTION 5. Tennessee Code Annotated, Section 48-2-109 is hereby amended by adding the following as a new appropriately designated subsection:

- ( ) It is unlawful for any investment adviser to employ an investment adviser representative unless the investment adviser representative is registered under this part. The registration of an investment adviser representative is not effective during any period when he or she is not associated with a particular investment adviser. When an investment adviser representative begins or terminates a connection with an investment adviser, or begins or terminates those activities which makes that person an investment adviser representative, both the investment adviser representative and the investment adviser shall promptly notify the commissioner.

SECTION 6. Tennessee Code Annotated, Section 48-2-110(a)(1), is amended by deleting the word "or" between the words "agent" and "investment adviser" and adding a comma "(,)" and the phrase "or investment adviser representative" between the words "advisor" and "may".

SECTION 7. Tennessee Code Annotated, Section 48-2-110(b), is amended by deleting the word “and” between the words “agent” and “two” and substituting a comma (,) in its place. Further this subdivision is amended by deleting the period (.) at the end of the sentence and adding at the end of the sentence a comma (,) and the following phrase “and fifty dollars (\$50) in the case of an investment adviser representative.”

SECTION 8. Tennessee Code Annotated, Section 48-2-110(e), is amended by deleting the word “and” between the “,” and the phrase “investment advisers” and by inserting the phrase “, and investment adviser representatives” after the phrase “investment adviser” .

SECTION 9. Tennessee Code Annotated, Section 48-2-112(a)(2)(E), is amended by deleting the language of subpart (E) in its entirety and by substituting the following language:

- (E) Is the subject of an order of the commissioner denying, suspending, or revoking any registration as a broker-dealer, agent, investment adviser, or investment adviser representative, or ordering any person to cease and desist from violating any provision of this part;

SECTION 10. Tennessee Code Annotated, Section 48-2-112(a)(2)(F)(i), is amended by deleting the existing language in its entirety and by substituting the following language:

- (i) Denying or revoking any registration as a broker-dealer, agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this part; or

SECTION 11. Tennessee Code Annotated, Section 48-2-112(a)(2)(J), is amended by deleting the language in subpart (J) in its entirety and by substituting the following language:

- (J) Has failed reasonably to supervise such person’s agents if the person is a broker-dealer, or such person’s investment adviser representatives if the person is an investment adviser; or

SECTION 12. Tennessee Code Annotated, Section 48-2-112(c)(2)(C), is amended by deleting the language contained in subpart (C) in its entirety and by substituting the following language:

- (C) An investment adviser representative.

SECTION 13. Tennessee Code Annotated, Section 48-2-112(c), is amended by adding after subdivision (6) the following subdivision:

- ( ) The commissioner shall consider that an investment adviser representative who will work under the supervision of a registered investment adviser need not have the same qualification as such investment adviser.

SECTION 14. Tennessee Code Annotated, Section 48-2-112(d), is amended by deleting the phrase “broker-dealer or agent or applicant for broker-dealer registration” and substituting “broker-dealer, agent, investment adviser, investment adviser representative, or applicant for broker-dealer, agent, investment adviser, or investment adviser representative registration.”

SECTION 15. Tennessee Code Annotated, Section 48-2-112(f)(1), is amended by deleting the word “or” between the words “agent” and “investment”, and adding a comma between the words “adviser” and “may”, and inserting the words “or investment adviser representative” between the words “adviser” and “may”.

SECTION 16. Tennessee Code Annotated, Section 48-2-112(f)(2), is amended by deleting the word “or” between the words “agent” and “investment”, and inserting the words “or investment adviser representative” between the words “adviser” and “becomes”.

SECTION 17. Tennessee Code Annotated, Section 48-2-112, is amended by deleting the language contained in subsection (g) in its entirety and by substituting the following language:

- (g) If the commissioner finds that any registered broker-dealer, agent, investment adviser, or investment adviser representative is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or

investment adviser representative, the commissioner shall by order cancel the registration of such broker-dealer, agent, investment adviser, or investment adviser representative.

SECTION 18. This Act shall become effective January 1, 2004.